

COTTONWOOD HEIGHTS

RESOLUTION NO. 2012-48

A RESOLUTION APPROVING A LIMITED AGENCY AGREEMENT WITH NUTERRA REALTY, LLC

WHEREAS, the city council (the "*Council*") of the city of Cottonwood Heights (the "*City*") met in regular session on 11 September 2012 to consider, among other things, approving an agency agreement (the "*Agreement*") with NuTerra Realty, LLC ("*NuTerra*") whereunder NuTerra would provide certain real estate services for City on the terms and conditions specified in the Agreement; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve the City's entry into the Agreement as proposed;


NOW, THEREFORE, BE IT RESOLVED by the Cottonwood Heights city council that the attached Agreement is hereby approved, and that the City's mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City.

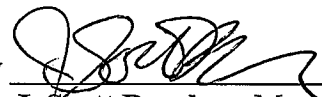
This Resolution, assigned no. 2012-48, shall take effect immediately upon passage.

PASSED AND APPROVED effective 11 September 2012.

COTTONWOOD HEIGHTS CITY COUNCIL




Linda W. Dunlavy, Recorder

By 
J. Scott Bracken, Mayor Pro Tempore

VOTING:

Kelvyn H. Cullimore, Jr.	<i>Absent</i>
Michael L. Shelton	Yea <input checked="" type="checkbox"/> Nay <input type="checkbox"/>
J. Scott Bracken	Yea <input checked="" type="checkbox"/> Nay <input type="checkbox"/>
Michael J. Peterson	Yea <input checked="" type="checkbox"/> Nay <input type="checkbox"/>
Tee W. Tyler	Yea <input checked="" type="checkbox"/> Nay <input type="checkbox"/>

DEPOSITED in the office of the City Recorder this 11th day of September 2012.

RECORDED this ___ day of September 2012.

584403.1

EXCLUSIVE BUYER-BROKER AGREEMENT & AGENCY DISCLOSURE

**THIS IS A LEGALLY BINDING CONTRACT. – READ CAREFULLY BEFORE SIGNING.
DESIGNATED AGENCY BROKERAGE**

THIS EXCLUSIVE BUYER-BROKER AGREEMENT (this "Agreement") is entered into on this 31st day of August 2012 by and between **NuTerra Realty, LLC** (the "Company") and city of **Cottonwood Heights** (the "Buyer").

1. TERM OF AGREEMENT. The Buyer hereby retains the Company (including Marc Lloyd, an authorized agent for the Company, who is referred to herein as the "Buyer's Agent"), starting on the date listed above, and ending at 5:00 P.M. (MST) on the 31st day of December 2012, or the closing of the Buyer's acquisition of the Property (defined below), whichever occurs first (the "Initial Term"), to act as the **EXCLUSIVE** agent for Buyer in locating and/or negotiating for the acquisition of a property specifically described as 1265 East Fort Union Boulevard, Cottonwood Heights, Utah (the "Property"). During the Initial Term of this Agreement, and any extensions thereof, the Buyer agrees not to enter into another buyer-broker agreement with another real estate agent or brokerage with respect to the Property.

2. BROKERAGE FEE. The Company's sole right to compensation for performing its duties hereunder shall be the right to any sales commission paid to the Company by a listing brokerage or the Seller (defined below) in connection with any acquisition by Buyer of the Property. Typically, the sales commission due to a buyer's agent is one-half the total brokerage fee (typically, 6% of the sales price) due by the seller to the listing brokerage.

3. PROTECTION PERIOD. If within 6 (six) months after the termination or expiration of this Agreement the Buyer, or any person acting on the Buyer's behalf, enters into an agreement to purchase, exchange for, or obtain a purchase option on, the Property, Buyer agrees to pay or cause to be paid to the Company the sales commission referenced in Section 2, which shall not exceed 3% of the purchase price paid by Buyer.

4. BUYER REPRESENTATIONS/DISCLOSURES. THE BUYER WARRANTS THAT THE BUYER HAS NOT ENTERED INTO ANY OTHER BUYER-BROKER AGREEMENT AFFECTING THE PROPERTY WITH ANY OTHER BROKERAGE THAT IS STILL IN FORCE AND EFFECT. The Buyer will: (a) in all communications with other real estate agents concerning the Property, notify the agents in advance that the Buyer has entered into this Agreement with the Company; (b) furnish the Buyer's Agent with relevant personal and financial

information to facilitate the Buyer's ability to acquire the Property; (c) exercise care and diligence in evaluating the physical and legal condition of the Property; and (d) hold harmless the Company and the Buyer's Agent against any claims as the result of any injuries incurred by the Buyer while inspecting the Property.

5. AGENCY RELATIONSHIPS. By signing this Agreement, the Buyer designates the Buyer's Agent and the Principal/Branch Broker for the Company (the "Broker"), as agents for the Buyer to negotiate the purchase of the Property for the Buyer's consideration and review. The Buyer authorizes the Buyer's Agent or the Broker to appoint (upon prior notice to and reasonable consent by the Buyer) another agent in the Company to also represent the Buyer in the event the Buyer's Agent or the Broker will be unavailable to service the Buyer. As agents for the Buyer, the Buyer's Agent and the Broker have fiduciary duties to the Buyer that include loyalty, full disclosure, confidentiality, and reasonable care. The Buyer understands, however, that the Buyer's Agent and the Broker are agents for the Seller under property management and leasing contracts for the owner of the Property (the "Seller") as landlord of the Property. Seller has sought and listed the Property for sale through a brokerage and agent different than the Company. The Buyer's Agent and the Broker will be acting as Limited Agents – representing the Buyer in this potential sales transaction, but having a relationship with the Seller as agent for property management and leasing services at the Property. A Limited Agent has fiduciary duties to both the Buyer and the Seller. However, those duties are "limited" because the agent cannot provide to both parties undivided loyalty, full confidentiality and full disclosure of all information known to the agent. All information provided to Buyer from Seller shall be provided by Seller's Agent and/or Seller's Broker, and not directly from the Company from information that Broker has in its possession by virtue of providing leasing and property management services for Landlord. THE BUYER IS ADVISED THAT NEITHER THE BUYER NOR THE SELLER IS REQUIRED TO ACCEPT A LIMITED AGENCY SITUATION IN THE COMPANY, AND EACH PARTY IS ENTITLED TO BE REPRESENTED BY ITS OWN AGENT. The Buyer authorizes the Buyer's Agent and the Broker to represent both the Buyer and the Seller as Limited Agents:

INITIAL APPLICABLE BOX: [] I AGREE TO LIMITED AGENCY; OR [] I DO NOT AGREE TO LIMITED AGENCY.

6. PROFESSIONAL ADVICE. The Company and the Buyer's agent are trained in the marketing of real estate. Neither the Company nor the Buyer's Agent are trained or licensed to provide the Buyer with professional advice regarding the physical condition of the Property or regarding legal or tax matters. BUYER IS ADVISED NOT TO RELY ON THE COMPANY, OR ON ANY AGENTS OF THE COMPANY, FOR A DETERMINATION REGARDING THE PHYSICAL OR LEGAL CONDITION OF THE PROPERTY, including, but not limited to: past or

present compliance with zoning and building code requirements; the condition of any appliances; the condition of heating/cooling, plumbing, and electrical fixtures and equipment; sewer problems; moisture or other problems in the roof or foundation; the availability and location of utilities; the location of property lines; and the exact square footage or acreage of the Property. AS PART OF ANY WRITTEN OFFER TO PURCHASE THE PROPERTY, THE COMPANY STRONGLY RECOMMENDS THAT THE BUYER ENGAGE THE SERVICES OF APPROPRIATE PROFESSIONALS TO CONDUCT INSPECTIONS, INVESTIGATIONS, TESTS, SURVEYS, AND OTHER EVALUATIONS OF THE PROPERTY AT THE BUYER'S EXPENSE. IF THE BUYER FAILS TO DO SO, THE BUYER IS ACTING CONTRARY TO THE ADVICE OF THE COMPANY.

7. DISPUTE RESOLUTION. The parties agree that any dispute related to this Agreement, arising prior to or after the acquisition of the Property, shall first be submitted to mediation through a mediation provider mutually agreed upon by the Buyer and the Company. If the parties cannot agree upon a mediation provider, the dispute shall be decided by litigation in the Third District Court of Salt Lake County, Utah. Each party agrees to bear its own costs of mediation. If mediation fails, the other remedies available under this Exclusive Buyer-Broker Agreement shall apply.

8. ATTORNEY FEES. Except as provided in Section 7, in case of the employment of an attorney in any matter arising out of this Agreement, the prevailing party shall be entitled to receive from the other party all costs and attorney fees, whether the matter is resolved through court action or otherwise.

9. ATTACHMENT. There ARE NOT additional terms contained in an Addendum attached to this Agreement.

10. EQUAL HOUSING OPPORTUNITY. The Buyer and the Company will comply with Federal, State, and local real estate laws.

11. FAXES. Facsimile (fax) or email transmission of a signed copy of this Agreement, and retransmission of a signed fax, shall be the same as delivery of an original. If this transaction involves multiple Buyers, this Agreement may be executed in counterparts.

12. ENTIRE AGREEMENT. This Agreement contains the entire agreement between the parties relating to the subject matter of this Agreement. This Agreement shall not be modified or amended except in writing signed by the parties hereto.

[Signature page follows]

THE UNDERSIGNED parties hereby accept the terms of this Agreement.

BUYER:

ATTEST:

COTTONWOOD HEIGHTS,
a Utah municipality

By: _____
Linda W. Dunlavy, Recorder

By: _____
Kelvyn H. Cullimore, Jr., Mayor

COMPANY:

NuTERRA REALTY, LLC

By: _____


Its: _____
Manager